

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made and effective as of January 1, 1998 between Immune Complex Corporation, a California corporation ("Company"), and David Milich, Ph.D. ("Consultant").

NOW, THEREFORE, in consideration of the above facts and the mutual promises set forth in this Agreement, the parties agree as follows:

1. Services. Company agrees to engage Consultant as an independent contractor to perform the services set forth in Exhibit A attached hereto and incorporated herein (collectively, the "Services"), and Consultant agrees to render the Services under the terms and conditions set forth in this Agreement. Consultant agrees to complete the Services in a satisfactory manner. This Agreement does not limit Consultant's ability to enter into agreements to perform services with other parties, provided such agreements or services are not in conflict with, and do not interfere with, Consultant's services hereunder.
2. Term. The term of this Agreement (the "Term") shall commence on January 1, 1998 continue for 12 months until the services are completed. Either party may terminate this Agreement when either party provides the other party with at least fourteen (14) days' advance written notice of the termination of this Agreement, which notice shall specify the date of termination. In any event this Agreement shall also terminate (a) upon Consultant's death or disability; or (b) shall for any other reason cease to be qualified, permitted or licensed to perform the services required of him under this Agreement, or under any laws or the rules of any regulating body having jurisdiction over said Services.
3. Compensation. As payment for the Services, Consultant shall be entitled to compensation as set forth in Exhibit B attached hereto and incorporated herein, which shall constitute complete compensation for the Services. Except as set forth on any schedule hereto, Consultant shall not be entitled to any other compensation or benefits for the Services. Company shall not reimburse Consultant for any expenses.
4. Relationship. The parties expressly intend, agree and understand that the relationship between them created by this Agreement is that of owner and independent contractor, and does not constitute a hiring by either party. Consultant is not an employee, partner or joint venturer of Company. Consultant shall not be treated as an employee of Company for federal or state tax purposes.
5. Taxes and Withholding. The Company will not withhold from the consulting fees any amount for taxes, social security or other payroll deductions. The Company will issue to Consultant a Form 1099 with respect to Consultant's compensation paid hereunder, will report such compensation using the same form, and will comply with other applicable tax reporting requirements. Consultant acknowledges that he will be entirely responsible for payment of any such taxes, and he hereby indemnifies and holds harmless the Company from any liability for any taxes, penalties or interest which may be assessed by any taxing authority. Consultant agrees that, upon Company's request, he shall execute any and all documents necessary to reflect or evidence that Consultant has paid all taxes on the compensation paid under this Agreement.
6. Confidential Information. Consultant recognizes that Consultant's performance of services

hereunder will involve contact with information of substantial value to the Company, which is not old and generally not known in the industry, and which gives the Company an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, methods, processes, inventions, information related to or included in patents or patent applications, research and development, equipment, prototypes, sales and customer information, customer proprietary information and prospect lists, and business and financial information relating to the business, products, practices and techniques of the Company and certain non-public information provided to the Company by its customers or business partners (collectively, "Confidential Information"). Consultant will at all times regard and preserve as confidential such Confidential Information obtained by Consultant from whatever source and will not, either during Consultant's service to the Company or thereafter, publish or disclose any part of such Confidential Information in any manner at any time, or use the same except on behalf of the Company, without the prior written consent of the Company. Further, both during Consultant's service hereunder and thereafter, Consultant will refrain from any acts or omissions that would reduce the value of such Confidential Information to the Company.

7. Disclosure of Inventions. Consultant agrees to promptly disclose in writing to the officials designated by the Company to receive such disclosures, complete information concerning each and every invention, discovery, improvement, device, design, apparatus, practice, process, method or product (collectively, "Inventions"), whether Consultant considers them patentable or not, made, developed, perfected, devised, conceived or first reduced to practice by Consultant, either solely or in collaboration with others, during the period of Consultant's service to the Company, and up to and including a period of one (1) year after termination of Consultant's services hereunder, whether or not during regular working hours, relating either directly or indirectly to the business, products, practices or techniques of the Company, or to the Company's actual or demonstrably anticipated research or development, or resulting from any work performed by Consultant for the Company.

8. Non-Solicitation. In order to protect the Confidential Information of the Company and avoid injury to the Company, Consultant agrees that during the term of this Agreement and for one (1) year thereafter, he will not, either directly or through others solicit or attempt to solicit any employee, consultant or independent contractor of the Company to terminate his or her relationship with the Company in order to become an employee, consultant or independent contractor to or for any other person or entity.

9. Assignment of Inventions. Attached hereto as Exhibit C is the Scripps Research Institute Uniform Consulting Agreement Provisions (the "Scripps Uniform Provisions"). Subject to the Scripps Uniform Provisions, Consultant hereby agrees that any and all Inventions made, developed, perfected, devised, conceived or reduced to practice by Consultant during the period of Consultant's service to the Company, and any other Inventions made, developed, perfected, devised, conceived or reduced to practice by Consultant during said period of one (1) year after termination of Consultant's services hereunder, relating either directly or indirectly to the business, products, practices or techniques of the Company or the Company's actual or demonstrably anticipated research or development, or resulting from any work performed by Consultant for the Company, are the sole property of the Company, and Consultant hereby assigns and agrees to assign to the Company, its successors and assigns, any and all of Consultant's rights, title and interest in and to any and all such Inventions, and any patent applications or Letters Patent thereon.

10. Right to Use or Publish. Nothing in this Agreement shall limit or be construed to limit Consultant's right to use or publish information which: (a) was in the public domain before Consultant's service hereunder commenced; (b) was known to Consultant to be free from any claim of other third parties before Consultant's service hereunder; (c) was developed or acquired independently of the Company; or (d) becomes public knowledge without breach by Consultant of any obligations of confidence to the Company.

11. Further Cooperation. Consultant will, at any time during Consultant's service hereunder or thereafter, upon request and, at \$ 100.00 per hour, do all lawful acts, including the execution of papers and oaths and the giving of testimony, that in the opinion of the Company, its successors and assigns, may be necessary or desirable for obtaining, sustaining, reissuing or enforcing Letters Patent in the United States and throughout the world for any and all of said Inventions, and for perfecting, recording and maintaining the title of the Company, its successors and assigns, to the Inventions and to any patent applications made and any Letters Patent granted for the Inventions in the United States and throughout the world.

12. Keeping of Records. Consultant will keep complete, accurate and authentic accounts, notes, data and records of any and all of the Inventions in the manner and form requested by the Company. Such accounts, notes, data and records, including all copies thereof, shall be the property of the Company, and, upon its request, Consultant agrees to promptly surrender same to the Company, or if not previously surrendered, Consultant will promptly surrender same to the Company at the conclusion of Consultant's services hereunder to the Company.

13. Surrender of Materials. Within three (3) days of the termination of this Agreement, or at Company's request, Consultant agrees to return to the Company all Company documents (and all copies thereof) and other Company property in his possession, or his control, including, but not limited to, Company files, notes, drawings, records, business plans and forecasts, financial information, specifications, equipment, notes, documents, memoranda, reports, files, books, correspondence, lists or other written or graphic records and the like relating to Company's business which are or have been in Consultant's possession and control, and any other materials of any kind which contain or embody any proprietary or Confidential Information of the Company (and all reproductions thereof), whether or not created by me, or which come into Consultant's possession by reason of Consultant's service to the Company, and Consultant agrees further that all of the foregoing are the property of the Company.

14. Prohibition of Misappropriation from Others. Consultant agrees that Consultant will not disclose to the Company, use, or induce the Company to use, any invention or confidential information belonging to any third party.

15. Imposed Obligations. Consultant understands that the Company may enter into agreements or arrangements that may be subject to laws and regulations which impose obligations, restrictions and limitations on it with respect to inventions and patents which may be acquired by it or which may be conceived or developed by employees, consultants or other agents rendering services to it. Consultant agrees that Consultant shall be bound by all such obligations, restrictions and limitations applicable to any Invention conceived or developed by Consultant during the period of Consultant's service to the Company, and Consultant shall take any and all further action which may be required to discharge such obligations and to comply with such restrictions and limitations.

16. No Inconsistent Agreements. Consultant represents and affirms that Consultant has no agreement with any other party that would preclude Consultant's compliance with Consultant's obligations under this Agreement.

17. Successors. The provisions of this Agreement shall inure to the benefit of, and be binding upon, the parties' heirs, personal representatives, successors and assigns. However, Consultant may not assign or delegate Consultant's obligations under this Agreement.

18. Equitable Relief. Consultant understands and agrees that, because of the unique nature of the Confidential Information, the Company will suffer irreparable harm if Consultant fails to comply with any of Consultant's obligations under this Agreement, and monetary damages will be inadequate to compensate the Company for such breach. Accordingly, Consultant agrees that the Company shall, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of this Agreement, without the necessity of posting a bond or undertaking.

19. Governing Law. This Agreement is made in San Diego, California and shall be construed and interpreted in accordance with the internal laws of the State of California. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, whether involving remedies at law or in equity, shall be adjudicated in San Diego, California.

20. Attorneys' Fees. In any controversy or claim arising out of or relating to this Agreement or the breach thereof, which results in a legal action, proceeding or arbitration, the prevailing party in such action, as determined by the court or arbitrator, shall be entitled to recover reasonable attorneys' fees and costs incurred in such action.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties, it supersedes any prior or contemporaneous agreement concerning assignment of intellectual property, patent rights or trade secrets, and may be waived, modified or amended only by an agreement in writing signed by the undersigned and the President of the Company.

22. Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

23. Miscellaneous. No covenant, term or condition of this Agreement or breach thereof shall be deemed waived unless the waiver is in writing, signed by the party against whom enforcement is sought, and any waiver shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. The normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Headings or captions of paragraphs or sections of this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.

24. Arbitration. Unless otherwise provided herein, any controversy or claim arising out of or relating to this Agreement shall be submitted to arbitration in accordance with the Commercial Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrator may

be entered in any court having jurisdiction thereof. Each party shall select an arbitrator, at its sole cost and expense, and such two arbitrators shall together select a third arbitrator, which third arbitrator shall be the sole arbitrator of any controversy or claim arising hereunder. The cost of expense of such third arbitrator shall be borne equally by the parties hereto. Notice of intent to submit a dispute to arbitration shall be given to the other parties as prescribed in Section 27 below.

25. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or telecopied (with receipt of delivery) or three (3) days after being sent by certified mail, return receipt requested, postage prepaid, to the parties at the following addresses or to such other address as either party to this Agreement shall specify by notice to the other:

If to Company: Immune Complex Corporation
3347 Industrial Court
San Diego, California 92121
George B. Thornton, President

If to Consultant: David Milich, Ph.D.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the date set forth above.

COMPANY

IMMUNE COMPLEX CORPORATION

By: 

George B. Thornton, President

CONSULTANT


David Milich, Ph.D.

Exhibit A

SERVICES

Consultation for the Company on the hepatitis B core antigen as an epitope carrier.

Exhibit B

COMPENSATION

Consultant shall be paid at the rate of \$5,000.00 Dollars per year for services rendered under this agreement.